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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON, EUGENE DIVISION

ROCKY J. BRADFORD, in his
individual capacity,

No.:

COMPLAINT

Jury Trial Demanded

NATIONAL RAILROAD
PASSENGER CORPORATION, d/b/a
AMTRAK, a Washington D.C.
corporation; UNION PACIFIC
RAILROAD COMPANY, a Delaware
corporation; UNITED SEATING AND
MOBILITY, L.L.C., a Missouri limited
liability company d/b/a NUMOTION;
PERMOBIL INC., a Tennessee
company; JOHN DOES 1-10, in their
individual and agency capacity and
XYZ ENTITIES 1-5.

Defendant.

1 COMES NOW, Plaintiff, by and through his attorneys of record and
2 respectfully sets forth the following statement of claims.
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4

5 I. JURISDICTION AND VENUE
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7

- 8 1. Plaintiff, Rocky Bradford, is a resident of Salem, Marion County,
9 Oregon.
10
- 11 2. Defendant, Permobil Inc. is a foreign corporation domiciled in
12 Tennessee and doing business in Oregon. ("Permobil")
13
- 14 3. Permobil is in the business of designing, manufacturing, marketing,
15 selling and leasing electronic wheelchairs, including complex
16 wheelchairs intended for use in the public.
17
- 18 4. Defendant, United Seating and Mobility, LLC, d/b/a Numotion
19 ("Numotion") is a foreign LLC domiciled in Tennessee and doing
20 business in Oregon.
21
- 22 5. Numotion is a national distributor, lessor, and retail sales provider of
23 complex rehabilitation technology, including complex power
24 wheelchairs systems and mobility devices that require evaluation,
25 fitting, configuration, adjustment, training and programming services.
26
- 27 6. Defendant, National Railroad Passenger Corporation d/b/a Amtrak
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29

1 ("Amtrak") is a foreign corporation domiciled in Washington D.C. and
2 authorized to conduct business in the state of Oregon.
3

4 7. Amtrak is engaged in the business of a common carrier by railroad in
5 interstate commerce and conducts regular sustained business in Marion
6 County, Oregon.
7

8 8. Defendant, Union Pacific Railroad Company ("Union Pacific") is a
9 foreign corporation domiciled in Delaware and authorized to conduct
10 business in the state of Oregon.
11

12 9. Defendant, Union Pacific is engaged in the business of a common
13 carrier by railroad in interstate commerce and conducts regular
14 sustained business in Marion County, Oregon.
15

16 10. Defendant, Union Pacific owns, maintains and controls the operation of
17 trains, including Amtrak trains, over crossing number 759652U
18 (Crossing 759352U), as identified by the United States Department of
19 Transportation, in the city of Salem that serves Silverton Road North
20
21 31 East. Union Pacific maintains Crossing 759652U.
22
23

24 11. XYZ Entities 1-5 are corporations similarly situated and structured as
25 Numotion and Permobil in that they are in the business of designing,
26
27

1 manufacturing, marketing, selling and leasing electronic wheelchairs,
2 including complex wheelchairs intended for use in the public, including
3 the wheelchair owned by Plaintiff. Further, XYZ Entities 1-5 are
4 corporations similarly situated as Union Pacific or Amtrak in that they
5 have a duty to Maintain Crossing 759652U and manage train traffic
6 through the city of Salem. Upon discovery of these Entities, Plaintiff
7 will amend the complaint accordingly.
8
9

10 12. John Does 1-10 represent individuals who work for Defendants,
11 including those identified in paragraph 11, and shared those Defendants
12 duties as outlined herein in the scope of their employment. Upon
13 discovery of these individuals, Plaintiff will amend the complaint
14 accordingly.
15
16

17 13. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)
18 because Plaintiff is a citizen of a different state than the Defendants, and
19 the amount in controversy exceeds \$75,000, exclusive of interest and
20 costs.
21
22

23 14. Venue is proper as the events giving rise to this action took place in the
24 city of Salem, Marion County, state of Oregon.
25
26

II. FACTS

15. Plaintiff realleges the facts stated herein.

16. Prior to the accident giving rise to these claims, Plaintiff, Rocky Bradford, was involved in an accident with a horse. He worked as an exercise boy at the time. The accident injured Rocky leaving him paraplegic.

17. Rocky was thus confined to a wheelchair; however, he was still had limited use of his lower extremities

18. Rocky has lived in Salem, Oregon at all material times. Salem is a town that has high railroad traffic and multiple railroad crossing. Frequent railroad traffic includes both passenger and freight traffic with the majority of the rails designed to handle freight traffic.

19. Due to the multiple rail lines, there are multiple railroad crossings for automobiles and pedestrians. This has resulted in multiple accidents to the point where the Salem area once held the title as the deadliest place in Oregon for railroad incidents. Joce Dewitt, Train track fatalities down in recent years, Stateman Journal, Dec. 21, 2013.

20. From 2013 through 2018, the number of railroad crossing accidents

1 nearly doubled within Marion County, the County where Salem is
2
3 located. Ben Botkin, Oregon railroad crossing crashes nearly double in
4
5 *5 years, reasons unclear*, Statesman Journal, Aug. 7, 2019.

6
7 21. In August, 2019, Claudia Howells, former head of Oregon's
8
9 Transportation Department Rail Division predicted the risk at railroad
10
11 crossings would increase in Salem stating, “[p]articularly in Salem
12
13 proper, as opposed to Marion County as a whole, you've got the UP
14
15 (Union Pacific) main line running in a very congestion area with a lot of
16
17 cars, a lot of pedestrians, so the risk is going to go up.” *Id.*
18
19

20
21 22. According to the Oregon Department of Transportation, 72% of
22
23 accidents between 2008 through 2017 occurred in urban locations with a
24
25 significant number of incidents being concentrated in the Willamette
26
27 Valley, specifically the Salem and Eugene metropolitan areas. These
28
29 are high population areas with a higher-than-average number of public
30
31 at-grade crossings.
32

33
34 23. From 2008 through 2017, Marion County had the greatest number of
35
36 accidents of all Counties in Oregon. The city of Salem had the highest
37
38 number of accidents of all the cities in the County. In fact, Salem had
39

1 the second highest number of accidents of all cities in Oregon behind
2 only Portland; the most populated city in Oregon. Oregon Department
3 of Transportation, Oregon Highway-Railroad Crossing Safety Action
4 Plan, (2019)

5
6
7
8 24.In early 2018, Rocky contracted with Numotion to have a motorized
9 wheelchair manufactured and customized for his needs. The Numotion
10 store Rocky worked with is located at 200 Hawthorne Ave. SE in Salem
11
12 Oregon.

13
14 25.Numotion, a seller, distributor and supplier of motorized wheelchairs,
15 holds itself out as an expert in mobility knowledge with extensive
16 industry experience in providing wheelchairs to its customers.

17
18 26.Numotion, with over 150 locations nationwide, helps customers find the
19 best wheelchair technology options for individual needs. It also helps
20 manage the insurance process for its customers and provides education
21 and support services after a customer is provided with a wheelchair.

22
23 27. Numotion worked with Permobil in acquiring Rocky's wheelchair.
24
25 Permobil is a seller, distributor, supplier and manufacturer of motorized
26 wheelchairs. Permobil designed, manufactured, and distributed Rocky's
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wheelchair.

28. Permobil holds itself out as a company that is passionate about providing a better life for people with mobility impairments. Permobil claims to tailor their products to meet the day-to-day reality of its users.

29. On or about June 25, 2018, Rocky received, through Numotion, a
Permobil manufactured Model M1 motorized wheelchair, serial number
2523001202.

30. The Model M1 wheelchair has two front caster wheels that measure 180 x 65 mm. This converts to 7 1/16 inches tall and 2 1/2 inches wide.

31. Rocky used this wheelchair to navigate over pedestrian rail crossings which required him to travel over rail flangeways.

32. A rail flangeway is an opening or a gap, parallel to a rail, made through platforms, pavements, or track structures to permit passage of the trains wheel flanges.

33. At pedestrian crossings, flangeways present a risk and hazard to those crossing as they can trip or get caught in the flangeway.

34. As an example, the gaps can cause individuals to trip or can create hazards for those using a cane, bicycle or wheelchair because those

1 items, or parts thereof, can fall into the flangeway and become stuck.
2

3 35. Because of this hazard, the Department of Transportation issued
4 Accessibility Standards under the Americans with Disabilities Act
5 (ADA) which apply to public transportation facilities, including the
6 pedestrian railroad crossing that is subject to this claim.
7
8

9 36. According to these standards, flangeways on pedestrian crossings must
10 be no wider 2 1/2 inches for passenger rail and 3 inches for freight rail.
11
12

13 37. Crossing 759652U served both freight and passenger rail and as such,
14 the flangeway was 3 inches wide.
15
16

17 38. Upon Rocky's receipt of the wheelchair, neither Permobil or Numotion
18 warned Rocky that use of his wheelchair over railroad crossing posed a
19 danger to him. He was not warned that the dimensions of the front
20 castor wheel were such that they could get stuck on the majority of rail
21 flangeways in Salem Oregon. He was not warned that, in the event that
22 a castor wheel did get stuck, that the wheelchair would not have the
23 power or maneuverability to overcome the flangeway.
24
25

26 39. In fact, nothing in the model M1 motorized wheelchair's Owner's or
27 User's Manual provided a warning that the front castor wheels could fall
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29

1 and become stuck inside a flangeway at a railroad crossing, let alone
2
3 that the wheelchair did not have the power or maneuverability to
4
5 extricate itself once stuck.
6

7 40.This, despite Permobil and Numotion having knowledge that
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9 wheelchairs could get stuck in flangeways when navigating railroad
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11 crossings.
12

13 41.This, despite Permobil and Numotion having knowledge of the high rail
14
15 traffic in Salem requiring pedestrians to routinely cross freight rail lines
16
17 that have a 3-inch gap in the flangeway at crossings.
18

20 42.On November 27, 2019, Rocky was traveling west on the sidewalk of
21
22 Silverton Road in Salem Oregon when he encountered Crossing
23
24 759652U.
25

26 43.He began to cross at a perpendicular angle after ensuring no trains were
27
28 approaching.
29

31 44.As he was crossing, he noticed large rocks, the size of golf balls spread
32
33 throughout on the crossing. Just before crossing the flangeway, his
34
35 front castor wheel suddenly shifted. When his castor wheel shifted, it
36
37 fell into the flangeway and got stuck.
38

1 45.Rocky attempted to operate his chair to get out of the flangeway but the
2 wheelchair lacked the power and maneuverability to overcome the
3 4 obstacle.
5

6 7 46.Suddenly, Rocky heard a train horn and noticed the crossing warning
8 lights activate and the crossing rail come down. The approaching train
9 10 was an Amtrak passenger train operated by Engineer, Peter Cozzi, who
11 12 13 was acting in the scope of his employment as an agent of Amtrak.
14

15 16 47.Rocky attempted to alert the oncoming Amtrak train that he was there
17 by pointing the lights on his wheelchair in the direction of the train.
18

19 20 48.However, the Amtrak train was traveling at a rate of speed higher than
21 that which is permitted in in this particular area of Salem.
22

23 24 49.Additionally, Amtrak personal were not properly maintaining a lookout
25 preventing them from timely being alerted that Rocky was stuck in the
26 27 28 tracks at the crossing, allowing them to stop before the collision.
29

30 31 50.Rocky then threw himself to the ground and laid as flat as possible
32 between the flangeway, terrified of the ensuing collision with Amtrak.
33

34 35 51.Amtrak failed to stop the train prior to the accident and collided with
36 37 38 Rocky's wheelchair and Rocky.
39

1 52. Rocky was dragged under the train suffering catastrophic injuries.
2

3 **III. FIRST CLAIM FOR RELIEF: NEGLIGENCE - AMTRAK**
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5 53. Plaintiff realleges paragraphs 1-52 herein.
6

7 54. Plaintiff's injuries were due in whole or in part to the acts and omissions
8
9 of Amtrak whose negligence includes but is not necessarily limited to
10
11 one or more of the following particulars:
12

13 a. In failing to maintain the crossing so that it would be safe for use
14
15 by the public, including Plaintiff;
16
17 b. In operating the train which struck Plaintiff at an excessive speed.
18
19 c. In failing to keep and maintain a proper lookout;
20
21 d. In failing to slow or stop the train prior to the accident; and
22
23 e. In failing to issue a slow order or otherwise instruct its own crews
24
25 to reduce speeds below the applicable speed limit at the
26
27 appropriate time.
28

29 55. These failures amounted to a breach by Amtrak of its duties owed to
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31 Plaintiff.
32

33 **IV. SECOND CLAIM FOR RELIEF: NEGLIGENCE – UNION PACIFIC**
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35 36 56. Plaintiff realleges paragraphs 1-52 herein.
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38

1 57. Plaintiff's injuries were due in whole or in part to the acts and omissions
2
3 of Union Pacific whose negligence includes but is not necessarily
4
5 limited to one or more of the following particulars:
6
7

- 8 a. In failing to construct, update, modify, and maintain the crossing
9 so that it would be safe for use by the public, including Plaintiff;
- 10 b. In failing to manage Amtrak allowing it to operate its train at an
11 unsafe speed over Crossing 759652U;
- 12 c. In failing to keep Crossing 759652U clear of debris by allowing
13 rocks to accumulate on the crossing creating a hazard for
14
15 pedestrians; and
- 16 d. In failing to maintain Crossing 759652U to be safe for use by the
17
18 public, including Plaintiff.

22
23 58. These failures amounted to a breach by Union Pacific of its duties owed
24
25 to Plaintiff.

31 **V. THIRD CLAIM FOR RELIEF: PRODUCT LIABILITY - PERMOBIL**
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33 59. Plaintiff realleges paragraphs 1-52 herein.
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1 60. Plaintiff's injuries were due in whole or in part to the acts and omissions
2
3 of Permobil whose negligence includes but is not necessarily limited to
4
5 one or more of the following particulars:
6

7 a. In failing to design, inspect, test, and manufacture the Plaintiff's
8
9 wheelchair to be capable of safely navigating over railroad
10 crossings, creating an unreasonably dangerous, defective
11
12 condition in the wheelchair when it was produced, distributed,
13
14 and sold. Namely, Permobil failed to account for the fact that the
15
16 wheelchair's castor wheel was able to fall into a flangeway and
17
18 the wheelchair's mobility and power was inadequate to free the
19
20 castor wheel from the flangeway.
21
22 b. In failing to warn Plaintiff of the hazard that the front castor
23
24 wheels are of the size that can fall and become stuck in
25
26 flangeways at railroad crossings.
27
28 c. In failing to instruct Plaintiff how to properly use the product in
29
30 light of the unreasonably dangerous and defective condition.
31
32

33 61. These failures amounted to a breach by Permobil of its duties owed to
34
35 Plaintiff.
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1 **VI. FOURTH CLAIM FOR RELIEF: PRODUCT LIABILITY - NUMOTION**
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3 62. Plaintiff realleges paragraphs 1-52 herein.
4

5 63. Plaintiff's injuries were due in whole or in part to the acts and omissions
6 of Numotion whose negligence includes but is not necessarily limited to
7 one or more of the following particulars:
8

9 a. In failing to design, inspect, test, and manufactured, if so
10 manufactured by Numotion, the Plaintiff's wheelchair to be
11 capable of safely navigating over railroad crossings, creating an
12 unreasonably dangerous, defective condition in the wheelchair
13 when it was manufactured, sold and/ or leased. Namely,
14 Numotion failed to account for the fact that the wheelchair's
15 castor wheel was able to fall into a flangeway and the
16 wheelchair's mobility and power was inadequate to free the castor
17 wheel from the flangeway.
18

19 b. In failing to warn Plaintiff of the hazard that the front castor
20 wheels are of the size that can fall and become stuck in
21 flangeways at railroad crossings, especially given the high rail
22 traffic in the city of Salem, the place Numotion conducts
23

1 business.
2

3 c. In failing to instruct Plaintiff how to properly use the product in
4 light of the unreasonably dangerous defective condition that the
5 castor wheels are able to fall into a flangeway and the
6 wheelchair's mobility and power is inadequate to free the castor
7 wheel from the flangeway, especially given the high rail traffic in
8 the city of Salem, the place Numotion conducts business.
9

10 16. These failures amounted to a breach by Numotion of its duties owed to
11 Plaintiff.
12

13 20. As a result of the negligence of the Defendants, each of them, Plaintiff
14 suffered severe injuries including but not limited to, retroperitoneal
15 hematoma, pelvic and spinal fractures, post-traumatic stress disorder,
16 mental anguish, and unsalvageable injuries to his legs resulting in
17 amputation.
18

19 31. As a further result of the negligence of the Defendants, each of them,
20 Plaintiff has incurred medical charges and expenses in excess of
21 \$523,637.30 and continued to incur charges and expenses as his
22 treatment is ongoing and is anticipated to last through the duration of his
23

1 lifetime. Plaintiff will amend this complaint to reflect the actual and
2 current charges and expenses as well as the estimated future charges and
3 expenses once discovered.
4

7 67. As a further result of the negligence of the Defendants, each of them,
8 Plaintiff has suffered noneconomic damages in the form of pain and
9 suffering in the amount not less than \$10,000,000.00.
10
11

12 68. Plaintiff gives notice to Defendants, each of them, of his intentions to
13 amend the complaint to seek punitive damages.
14
15

16 **VII. PRAYER FOR RELIEF**
17

18 20 **WHEREFORE**, Plaintiff prays for the following relief:
21

22 22 1. For judgment in favor of Plaintiff against all defendants, individually
23 and joint and severally as the law shall so provide, together with an
24 award for economic and noneconomic damages that will fully and
25 fairly compensate him for his injury claim as set forth herein.
26
27 2. For an award of reasonable attorneys' fees and costs as permitted by
28 law, including under applicable statutes, regulations, court rules, case
29 law, and/or recognized grounds in equity.
30
31 3. For such other relief that this court deems just and equitable.
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1 Dated this 12th day of November, 2021.
2

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28 ***Pro Hac Vice Motion Pending***
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